

**ANNUAL REPORT
To the Commissioner
Department of Environmental Protection
July 1, 1999 -- June 30, 2000
FY 2000**

I. Introduction

The Board of Underground Storage Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, 1990, 1992, and 1997. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil storage tank installers and to assure the availability of underground oil storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation services."

Thus, the Board has three major responsibilities: (1) certifying underground oil tank installers and underground gasoline tank removers, (2) managing and accrediting continuing education for certified underground tank installers and removers, and (3) taking disciplinary actions against installers and removers who violate its enabling statutes and rules. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA §10004(6)). This report is designed to fulfill that mandate for FY 1999/2000. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Newsletter;
- Data Management; and
- Financial Statement

II. Membership and Staffing

Members of the Board are as follows:

- Wayne Gifford, chair (Maine Oil Dealers' Association) - Term expires 12/31/2000
- George Seel (DEP) - Term expires 12/31/2002.
- William Carver (certified installer) - Term expires 12/31/2001.
- (Vacant) (Maine Oil and Solid Fuel Board) - Term expires 12/31/2001
- Roger Lewis (Public Member) - Term expires 12/31/2001.
- Raymond Poulin (Maine Fire Chief Association) - Term expires 12/31/2002.
- Joseph (Bruce) Probert (Me. Chamber of Commerce) - Term expired 12/31/1998.¹

George Seel was appointed to replace Alan Ball as the representative of the Maine Department of Environmental Protection in April 2000. The seat held by a member of the Maine Oil and Solid Fuel Board, the Plumber's Examining Board, or the State Board of Certification for Geologists and Soil Scientists remains vacant after over a year. We understand from the Department of Professional and Financial Regulation that they have been unable to obtain a volunteer for this seat from any of the other three (3) Boards. As a result, the Board of Underground Storage Tank Installers (BUSTI) requested staff to look into amending BUSTI's enabling legislation to replace representation from one of these other Boards with a public member.

Likewise, a replacement acceptable to all parties for Mr. Probert as the representative of the Maine Chamber of Commerce and Industry has not been nominated. Our understanding is the Chamber continues to be interested in having a seat on the Board, so we continue to await a nomination.

James Hynson and Theresa Scott continued to provide staffing to the Board. Staff provided additional sporadic support from the Department of Environmental Protection, including W. David McCaskill, Diana McLaughlin, Beth DeHaas, Harold Evans, Eric Hamlin, Mark Holden and Ted Scharf. Dennis Harnish provided support from the Office of the Attorney General.

III. New Certifications and Testing

This section includes discussions on (A) number of installers certified, (B) written exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

A. Number of Installers Certified

The number of certified installers is 117 compared to 142 that were certified at the end of FY 98/99. At present, this includes 114 who hold Class 2 Oil Tank Installer Certificates, and three (3) Class 3 Oil Tank Installers. Twenty-five (25) elected not to apply for recertification once their old certificates expired.

There are two (2) underground gasoline tank removers in Maine, one of whom was certified in FY 94/95 and recertified this year. The third was certified in FY 96/97 and recertified this year. A third elected to allow his certificate to lapse this year.

With demand for underground tank installation declining as a result of the State's deadline for tank replacement passing, we anticipate the population of installers to decline. A need for trained individuals will remain, however, to accomplish maintenance work and conduct inspections. As a result, the Board has requested staff assess the potential for developing certification processes that enable individuals to inspect and conduct routine maintenance on underground storage tank facilities.

¹ Mr. Probert completed the maximum number of terms allowed by law as of December 31, 1998. He is continuing to serve until a replacement is found pursuant to the Board's enabling statute.

B. Written Exams

Since the Board received no applications for certification last year nor had it any active apprentices, it did not schedule any examinations for the public. Because of the lack of demand for testing, very little effort was expended updating examinations. Several of the documents used in the examination have been revised. As a result, a process of updating examinations will be necessary if and when demand increases for examinations.

C. On-Site Exams

The 1990 amendments to the Board's enabling legislation and rules eliminated the need to conduct on-site examinations for applicants for oil tank installer certificates. While on-site exams remain required for underground gasoline tank removers, no applicants for underground gasoline tank remover certificates took the written examination in FY 1999/2000, and thus none were eligible for the on-site examination.

D. Upgrades

No Class 3 Underground Tank Installers completed apprenticeship requirements and passed the final examination to be upgraded to Class 2 Underground Tank Installers in FY 1999/2000.

E. Apprenticeships

With the passing of Maine's deadline for tank replacement in October 1997, the requirement for six (6) apprentice installations has become considerably more difficult since the availability of new installation work declined appreciably. No apprentices qualified for the final examination last year and none of the previously certified apprentices appear to be interested in remaining active.

F. Variances

The 1990 amendments to the Board's enabling legislation instituted a variance process for individuals to obtain variances for the apprenticeship portion of the certification process (32 MRSA §10010.3-A.D; 06-481 CMR c. 3 §4.D). During FY 1999/2000, the Board received no formal applications for variances.

IV. Recertification and Continuing Education

Thirty-two (32) installers were granted full renewal certificates while twenty-five (25) did not reapply.

Continuing education programs accredited by the Board in FY 1999/2000 generally applicable to all installers are listed in Table 1. The Board approved a total of 52 credit hours from both program sponsor and individual installer applicants.

V. Processing of Complaints

Disciplinary actions involving sixteen (16) investigations and thirty-one (31) alleged violations were processed and resolved in FY 1999/2000, including eight (8) investigations held over from 1998/99. A summary of the Board's actions in these matters is presented in Appendix A. Two (2) investigations required hearings to resolve, nine (9) were settled with Consent Agreements, three (3) were dismissed, one (1) required the Board to issue an order after the installer failed to avail himself of his right to a hearing, and one (1) was tabled indefinitely since the installer allowed his certificate to lapse.

Program	Sponsor	Date Approved	Credit Hours
8 Hr. OSHA Refresher Training, 1998	Clean Harbors/Mike Tatarcyk	September 07, 1999	2
8 Hr. OSHA Refresher Training, 1999	Clean Harbors/Mike Tatarcyk	September 07, 1999	2
Veeder Root UST Monitoring Systems	Veeder Root/Geoffrey Wright	January 21, 2000	2
Spring 2000 Tank Installers Program	Maine Oil Dealers Association	January 21, 2000	4
40 Hr. Haz. Material Hazwhoper (Renew)	Burgess & Associates	January 21, 2000	8
8 Hr. Haz. Material Hazwhoper (Renew)	Burgess & Associates	January 21, 2000	2
40 Hr. Hazardous Waste Operations	Environmental Safety & Hygiene	January 21, 2000	8
8 Hr. Supervisor Upgrade Course	Environmental Safety & Hygiene	January 21, 2000	2
8 Hr. Hazardous Operations Review	Environmental Safety & Hygiene	January 21, 2000	2
API's Operation Underground Installation Segment (Renew)	API/Valeen Young	January 21, 2000	3
API's Operation Underground Removal Segment (Renew)	API/Valeen Young	January 21, 2000	2
8-Hr. Hazardous Waste Oper. (Renew)	CES Engineers; Kay Allcroft	February 18, 2000	2
Piping Recertification & Seminars	John W. Kennedy; D. Blanchette	February 18, 2000	2
OSHA Refresher Class (1998)	Clean Harbors/Gordon Pott	March 20, 2000	2
OSHA Refresher Class (2000)	Clean Harbors/Gordon Pott	March 20, 2000	2
8-Hr. Hazwoper Refresher Training	Alan Ingraham/Dead River Co.	May 12, 2000	1
8-Hr. Hazwoper Refresher Training	Dead River Co./Donald Pelletier	May 12, 2000	1
8-Hr. Hazwoper Refresher Training	Dead River Co./Mark Bossie	May 12, 2000	1
8-Hr. Hazwoper Refresher Training	Dead River Co./Nelson Jandreau	May 12, 2000	1
8-Hr. Hazwoper Refresher Training	Dead River Co./John Johnson	May 12, 2000	1
8-Hr. OSHA Refresher Training	Alan Lyscars/Field Services, Inc.	June 16, 2000	2

Table 1. Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 1999/2000.

One installer appealed the Board's findings of an investigation acted upon in 1998/99 to Administrative Court. In that case, the Board found the installer (1) used fiberglass piping to support a steel vent riser against the manufacturer's instructions, (2) failed to properly clamp the steel vent riser piping, (3) improperly glued fiberglass piping allowing it to leak, (4) used unapproved materials for secondary containment piping, and (5) allowed a tank removal to progress without a site assessment being conducted. Administrative Court upheld the Board's findings and allowed the Board's penalties of \$3800 to stand.

Twelve (12) complaints involving twenty (20) alleged violations were received in FY 1999/2000. Investigations that remain unresolved at the end of the year are listed in Table 2.

Principle Violation	Year	No.	Date Received
06-481CMR1.4.B(1)	2000	10	05/08/2000
06-481CMR1.4.B(1)	2000	11	04/28/2000
06-096CMR691(6)(B)(2)	2000	12	06/16/2000
06-096CMR691(6)(B)(3)	2000	12	06/16/2000
06-096CMR691(6)(B)(5)(iii)	2000	12	06/16/2000

Table 2. Maine Board of Underground Storage Tank Installers ongoing enforcement actions as of June 30, 2000.

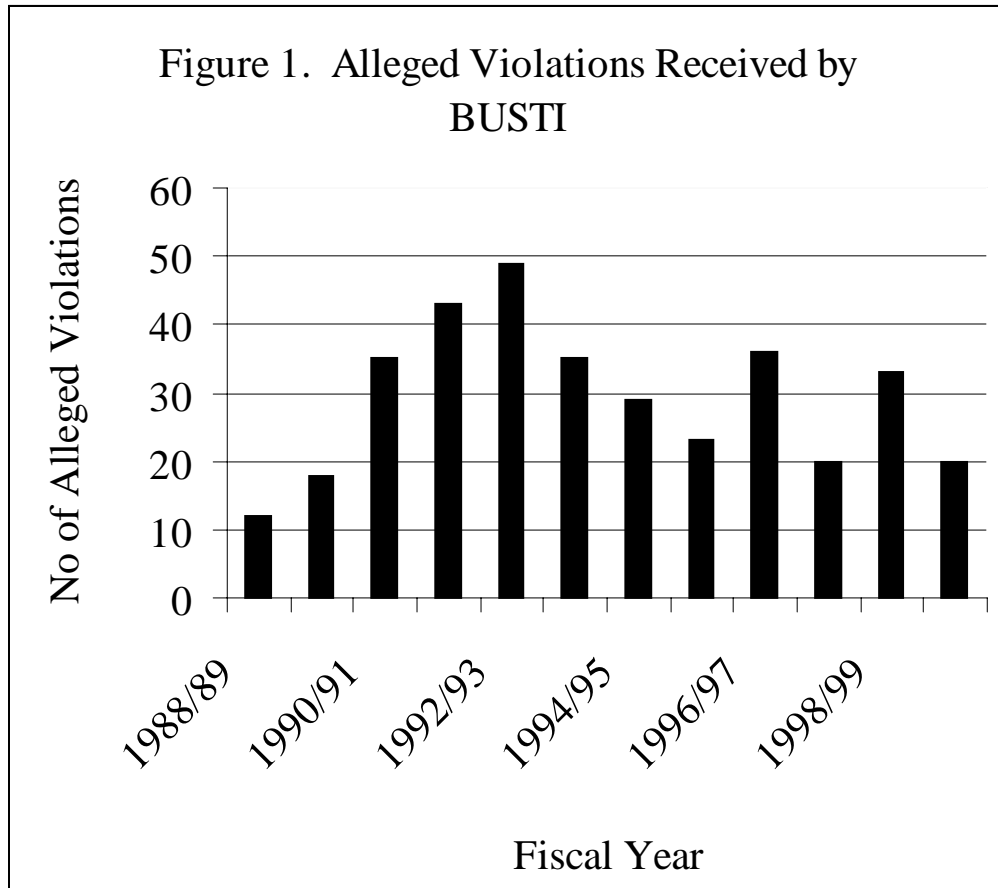
Figure 1 shows the number of alleged violations investigated by the Board and its staff since promulgation of the Board's rules in August 1988. This graph indicates a decline from last year with a value equivalent to the year before and consistent with the range of alleged violations received on a long term basis.

VI. Rulemaking and Program Development

We did not engage in rulemaking this year. Although we still need to amend the rules for certifying underground gasoline tank removers to make them consistent with legislation allowing on-site examinations to be conducted on fuel oil tanks, lack of demand for the remover certificate reduces the importance of accomplishing this rulemaking.

The 119th Maine Legislature, second session addressed a bill that affected the Board's enforcement authority and thus required some effort on the part of DEP staff and the Board's staff to negotiate. Specifically, LD 2437, An Act to Revise the Funding of the Ground Water Oil Clean-up Fund, originally would have required enforcement actions to commenced "within 3 years after the cause of action accrues." Both the Board and the Department determined that this would have seriously compromised the Board's ability to act against installers who accomplished faulty work. Fortunately, significant changes occurred to the language which limited the adverse impact on the Board's authority:

"An action by the board against a certified person for any violation of this chapter relating to a tank or equipment installed on or after September 16, 1991 must be commenced within 3 years after the violation is discovered, but the action may not be commenced more than 15 years after installation of the storage tank or equipment that is the subject of the violation."



VII. Newsletter

One of the initial benefits of certification of installers was the development of ability by the State to communicate with installers via a newsletter. One issue of "The Maine Installer" was published during FY 1999/2000. The newsletter appears to be well received whenever it can be published.

VIII. Data Management

We continue to use the databases developed previously in Microsoft EXCEL for our data management needs. As time permits, we will be developing Microsoft ACCESS databases. A home page on the Internet which includes the Board's application forms, a list of certified individuals, a description of the Board's program, and past newsletters, meeting minutes, and approved continuing education is in draft form and expected to be completed in the near future.

IX. Financial Statement

The Board's financial statement for FY 1999/2000 is provided in Table 3. For the first year, revenues of the Board have their own budget categories in the State system and thus actual values, as entered by the Agriculture, Conservation, and Environmental Protection (ACE) Service Center are provided.

Income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and thus income for this year reflects the vast majority of tank installers becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low, with this year a high year.

Respectfully Submitted,

Wayne Gifford,
Chairman

Income (Estimated)	(\$)
License Fees	6,460.00
Civil Penalties	3,305.00
Exam Fees	3.60
Subtotal	9,850.00
Expenses: Account 014 06A 1520 44x	(\$)
Personal Services	69,598.14
Fringe	23,669.54
Contractual	1,544.17
Travel	647.60
Training	56.98
Food	105.71
Telephone	1,150.80
Supplies	309.02
Other	1,358.60
Sta-Cap	2,003.50
Subtotal	100,444.06
Grand Total²	-90,594.06

Table 4. Financial statement for the Board of Underground Tank Installers, July 1, 1999 through June 30, 2000.

²Pursuant to 32 MRSA Sec. 10012.2, all fees and expenses of the Board of Underground Storage Tank Installers are deposited into and paid out of the Ground Water Oil Cleanup Fund. Thus, shortfalls of the Board are made up from other revenue sources from the Fund.

Appendix A

Maine Board of Underground Storage Tank Installers
Summary of FY 1999/2000 Enforcement Actions (By Violation)

Alleged Violation	Year	No.	Date Received	Action Date	Board Action	Result	Fine	(Days) Susp.	Days Probation	Other	Date Closed
06-096CMR118.3.A	2000	5	02/24/2000	03/17/2000	CA	CA	\$500				05/19/2000
06-096CMR691.5.A.1.ii	1999	9	03/25/1999	09/07/1999	Hearing	Dismiss					09/07/1999
06-096CMR691.5.A.1.ii	1999	9	03/25/1999	09/07/1999	Hearing	Dismiss					09/07/1999
06-096CMR691.5.A.1.ii	2000	1	09/07/1999	09/07/1999	CA	CA	\$500	30			09/07/1999
06-096CMR691.5.A.1.ii	2000	1	09/07/1999	09/07/1999	CA	CA	\$500	30			09/07/1999
06-096CMR691.5.B.3.b.ii	2000	5	02/24/2000	03/17/2000	CA	CA	\$250				05/19/2000
06-096CMR691.5.B.6.a	1999	11	05/19/1999	09/07/1999	Table	License Expired					09/07/1999
06-096CMR691.5.B.6.a	1999	11	05/19/1999	09/07/1999	Table	License Expired					09/07/1999
06-096CMR691.5.B.7	1999	11	05/19/1999	09/07/1999	Tabled	License Expired					09/07/1999
06-096CMR691.5.B.7	1999	11	05/19/1999	09/07/1999	Table	License Expired					09/07/1999
06-096CMR691.5.B.7	2000	5	02/24/2000	03/17/2000	CA	CA	\$1,000				05/19/2000
06-096CMR691.5.D.13	1999	13	05/27/1999	10/22/1999	CA	CA	\$250				01/21/2000
06-096CMR691.5.D.13	1999	14	05/27/1999	10/22/1999	CA	CA	\$250				01/21/2000
06-096CMR691.6.B.2	1999	12	05/25/1999	09/07/1999	Dismiss	Dismiss					09/07/1999
06-096CMR691.6.B.2	1999	15	06/28/1999	10/22/1999	CA	Order	\$300				10/22/1999
06-096CMR691.6.B.6.b.I	1999	15	06/28/1999	10/22/1999	CA	Order				Warning	10/22/1999
06-096CMR691.6.B.6.b.iii	1999	10	05/17/1999	10/22/1999	CA	CA				Warning	10/22/1999
06-096CMR691App.E.1	2000	3	11/12/1999	03/17/2000	Dismiss	Dismiss					03/17/2000
06-096CMR691App.E.1	2000	4	01/24/2000	03/17/2000	Table	Dismiss					05/19/2000
06-096CMR691App.E.1	2000	4	01/24/2000	03/17/2000	Dismiss	Dismiss					03/17/2000
06-096CMR691App.E.1	2000	7	01/24/2000	03/17/2000	CA	CA	\$600				05/19/2000
06-096CMR691App.E.5	2000	5	02/24/2000	03/17/2000	CA	CA	\$1,200		180	Ed	05/19/2000
06-096CMR691App.E.7	2000	5	02/24/2000	03/17/2000	CA	CA	\$1,000				05/19/2000
06-096CMR691App.J.4	1999	8	02/25/1999	05/21/1999	Hearing	Dismiss					09/28/1999
06-096CMR691App.J.6	1999	8	02/25/1999	05/21/1999	Hearing	Dismiss					09/28/1999

Appendix A

Alleged Violation	Year	No.	Date Received	Action Date	Board Action	Result	Fine	(Days) Susp.	Days Probation	Other	Date Closed
06-096CMR691AppD.3	1999	15	06/28/1999	10/22/1999	CA	Order				Warning	10/22/1999
06-096CMR691AppJ.3	1999	8	02/25/1999	05/21/1999	Hearing	Order		60	180	Ed.	09/28/1999
06-481CMR1.4.A.2.b	2000	6	03/17/2000	05/19/2000	CA	CA	\$500				06/16/2000
06-481CMR1.4.B.1	2000	2	09/07/1999	10/22/1999	CA	CA	\$250		180	Ed	10/22/1999
06-481CMR1.4.B.1	2000	8	03/31/2000	05/19/2000	CA	CA			180	Ed	06/16/2000